

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

LEON IRBY,

Plaintiff,

v.

Case No. 08-C-0258

NURSE MARY GORSKE and BELINDA SCHRUBBE,

Defendants.

ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (DOC. #20), DENYING AS MOOT PLAINTIFF'S MOTION FOR LEAVE TO FILE AMENDED AFFIDAVIT (DOC. #46), DENYING AS MOOT PLAINTIFF'S MOTION FOR LEAVE TO FILE "SUR BRIEF" (DOC. #48), DENYING AS MOOT PLAINTIFF'S MOTION TO SUPPLEMENT SUR BRIEF (DOC. #51), DENYING AS MOOT PLAINTIFF'S MOTION TO SUPPLEMENT AMENDED AFFIDAVIT (DOC. #52), AND DENYING AS MOOT PLAINTIFF'S MOTION TO SUPPLEMENT DECLARATION (DOC. #53)

This matter comes before the court on the defendants' motion for summary judgment and a number of motions filed by the plaintiff regarding his response to the motion.

The defendants submit that they are entitled to summary judgment because the plaintiff has received adequate medical care since his arrival at Waupun Correctional Institution (Waupun). In support of their motion, the defendants rely solely on the affidavits of defendants Mary Gorske and Belinda Schrubbe. Gorske's affidavit includes detailed descriptions of all medical treatment the plaintiff has received since arriving at Waupun. She states that the affidavit is based on her personal knowledge, as well as her "review of the Health Services file of plaintiff, Leon Irby." (Affidavit of Mary Gorske, ¶1). Likewise, Schrubbe's affidavit advises that it is based, in part, on her "review of Leon Irby's (Irby) medical records" and purports to cite information gleaned from these records.

(Affidavit of Belinda Schrubbe, ¶2). Yet neither affidavit is accompanied by exhibits, let alone the referenced medical records.

Federal Rule 56(e) provides, in part: “If a paper or part of a paper is referred to in an affidavit, a sworn or certified copy must be attached to or served with the affidavit.” See also *Scott v. Edinburg*, 346 F.3d 752, 760 n.7 (7th Cir. 2003). The defendants have failed to meet this requirement. Therefore,

IT IS ORDERED that the defendants’ motion for summary judgment (Docket #20) is DENIED.

IT IS FURTHER ORDERED that the plaintiff’s motion for leave to file an amended affidavit (Docket #46) is DENIED AS MOOT.

IT IS FURTHER ORDERED that the plaintiff’s motion for leave to file “Sur Brief” (Docket #48) is DENIED AS MOOT.

IT IS FURTHER ORDERED that the plaintiff’s motion to supplement plaintiff’s Sur Brief with page 22 (Docket #51) is DENIED AS MOOT.

IT IS FURTHER ORDERED that the plaintiff’s motion to supplement amended affidavit (Docket #52) is DENIED AS MOOT.

IT IS FURTHER ORDERED that the plaintiff’s motion to supplement declaration (Docket #53) is DENIED AS MOOT.

Dated at Milwaukee, Wisconsin, this 4th day of March, 2010.

BY THE COURT

/s/ C. N. Clevert, Jr.
C. N. CLEVERT, JR.
Chief U.S. District Judge